

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

ROBERT W. BARICKMAN,

Petitioner,

v.

//

CIVIL ACTION NO. 1:07CV134
(Judge Keeley)

FRED BUMGARDNER, ET AL.

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On September 28, 2007, pro se petitioner, Robert W. Barickman ("Barickman"), filed a civil rights complaint under the federal Freedom of Information Act and Privacy Act ("FOIA"), 5 U.S.C. §§ 551 and 552(e), and the West Virginia Freedom of Information Act, W.Va. Code § 29B-1-1, et seq. The Court referred this matter to United States Magistrate Judge John S. Kaul for initial screening and a report and recommendation in accordance with the Local Rules of Prisoner Litigation.

On October 20, 2007, the defendants filed a motion to dismiss for lack of jurisdiction. On July 1, 2008, Magistrate Judge Kaul issued an Opinion and Report and Recommendation recommending that the motion to dismiss be granted, because the federal FOIA does not apply to state agencies and officials, and the Eleventh Amendment precludes this Court from enforcing the state FOIA against state officials. He further recommended that Barickman's Complaint be dismissed with prejudice.

ORDER ADOPTING OPINION/REPORT AND RECOMMENDATION

The Report and Recommendation also specifically warned that failure to object to the recommendation would result in the waiver of any appellate rights on this issue. No objections were filed.¹

Therefore, the Court **ADOPTS** the Report and Recommendation in its entirety (dkt. no. 20), **GRANTS** the motion to dismiss (dkt. no. 12), and **ORDERS** Barickman's case **DISMISSED WITH PREJUDICE** and stricken from the Court's docket.

It is so **ORDERED**.

The Clerk is directed to transmit a copy of this Order to counsel of record, and to mail a copy to the pro se petitioner, certified mail, return receipt requested.

Dated: July 22, 2008

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE

¹ The failure to object to the Report and Recommendation not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).